



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0714]

RIN 1625-AA08

Special Local Regulation; Annual Events on the Maumee River,
Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its safety of life on navigable waters regulations by adding two Special Local Regulations within the Captain of the Port Detroit Zone on the Maumee River, Toledo, Ohio. These special local regulated areas are necessary to protect spectators, participants, and vessels from the hazards associated with these races. These regulations are intended to regulate vessel movement in portions of the Maumee River during the annual Dragon Boat Races and Frogtown Races.

DATES: This rule is effective without actual notice [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from July 19, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket number USCG-2012-0714. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST2 Daniel O'Leary, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6041, e-mail daniel.s.oleary@uscg.mil. If you have questions on viewing material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplemental Notice of Proposed Rulemaking

A. Regulatory History and Information

On September 10, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Partnership in Education Dragon Boat Race, Maumee River Toledo, OH in the Federal Register (77 FR 55436). The NPRM proposed to amend 33 CFR Part 100 to add a special local regulation for the Partnership in Education Dragon Boat Race on the Maumee River, Toledo, OH. We did not request public meeting, and no public meetings were held for the NPRM. However, one public comment was received in response to the NPRM publication in the Federal Register, which we addressed in the Discussion of Proposed Rule section of a May 9, 2014 supplemental notice of proposed rulemaking (79 FR 26661) entitled Special Local Regulation; Annual Events on the Maumee River.

In that SNPRM, the Coast Guard proposed further amending 33 CFR Part 100 to add a special local regulation for the Frogtown Races which is also conducted on the Maumee River, Toledo, OH. We did not request a public meeting, and no public meetings were held for the SNPRM. Additionally, no public comments were received in response to the SNPRM publication in the Federal Register.

Although the Coast Guard provided prior notice and an opportunity to comment on these proposed Special Local Regulations, we find that good cause exists for making this

final rule effective less than 30 days after publication in the Federal Register to accommodate the 2014 Partnership in Education, Dragon Boat Races, which is scheduled for July 19, 2014. Waiting 30 days after publication for this rule to take effect would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to enforce the Special Local Regulation for this annual event to mitigate the extra and unusual hazards associated with the annual event.

B. Basis and Purpose

Each year, two organized racing events take place on the Maumee River. The Dragon Boat Races, in which participants paddle Hong Kong-style Dragon Boats from International Park at approximate River Mile 4.45 to just south of the mouth of Swan Creek at approximate River Mile 4.77 on the Maumee River, Toledo, OH; and the Frogtown Races, in which participants row shell boats from the Norfolk and Southern Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16 on the Maumee River, Toledo, OH. The Captain of the Port Detroit has determined that these boat races, which are in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property, including potential collisions, allisions, and individuals falling in the water. Thus, the Captain of the Port Detroit has

determined it necessary to establish a permanent Special Local Regulation around each location of these two races to ensure the safety of persons and property at these annual events and to help minimize the associated risks.

C. Discussion of Comments, Changes and the Final Rule

As stated in the Regulatory History and Information section, the Coast Guard received one comment in response to the September 10, 2012 NPRM publication. The comment noted a clause in the preamble of the NPRM that "the races will stop for oncoming freighter or commercial traffic," was not included in proposed regulatory text and recommended that the clause should be included. In the May 9, 2014 SNPRM, we concurred with the comment and included the clause in the proposed regulatory text of the rule. Although the Coast Guard's position remains unchanged on this comment, we note the event permitting process includes communication of the event between sponsors and local commercial entities, with the goal of coordinating event schedules with commercial vessel arrivals or departures. Public and sponsor concerns with vessel traffic are taken into consideration during the permitting process.

As a change from the SNPRM, this rule includes language reflecting the enforcement of the Special Local Regulation for

the Partnership in Education, Dragon Boat Races from 6 a.m. to 6 p.m. on July 19, 2014.

The Captain of the Port Detroit will establish the following Special Local Regulations:

Dragon Boat Races, Maumee River, Toledo, OH: This Special Local Regulation encompasses all navigable waters of the United States on the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39'5.27"N; 083°31'34.01"W straight across the river along the Cherry Street bridge to position 41°39'12.83"N; 083°31'42.58"W and a line extending from a point of land just south of International Park at position 41°38'46.62"N; 083°31'50.54"W straight across the river to the shore adjacent to position 41°38'47.37"N; 083°32'2.05"W (NAD 83). It would be enforced annually on the third or fourth Saturday in July. The exact dates and times would be issued annually via a Notice of Enforcement. For 2014, the Captain of the Port Detroit will enforce this Special Local Regulation from 6 a.m. to 6 p.m. on July 19, 2014.

Frogtown Races, Maumee River, Toledo, OH: The Special Local Regulation would encompass all U.S. waters on the Maumee River, Toledo, OH from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16. It will be enforced annually on the third or fourth

Saturday in September. The exact dates and times will be issued annually via a Notice of Enforcement.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Special Local Regulations, established by this rule, will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain

conditions, moreover, vessels may still transit through the area when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the areas designated as special local regulations during the dates and times the special local regulations are being enforced.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: the special local regulations will be enforced 1 day each is enforced annually. In addition, on-scene representatives will allow vessels to transit along the Western side of the river at a slow no wake speed. The race

committees will stop the races for any oncoming commercial traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards of The National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Commandant Instruction because it involves the establishment of a Special Local Regulation. A preliminary environmental checklist supporting this determination is available in the

docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.927 to read as follows:

§ 100.927 Special Local Regulation, Partnership in Education, Dragon Boat Festival, Toledo, OH.

(a) Regulated Area. The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, between a line starting from a point on land just north of the Cherry Street Bridge at position 41°39'5.27"N; 083°31'34.01"W straight across the river along the Cherry Street bridge to position 41°39'12.83"N; 083°31'42.58"W and a line extending from a point of land just south of International Park at position 41°38'46.62"N; 083°31'50.54"W straight across the river to the

shore just south of the mouth of Swan Creek at position
41°38'47.37"N; 083°32'2.05"W (NAD 83).

(b) Enforcement period. This section will be enforced annually on the third or fourth Saturday of July. The exact dates and times would be issued annually via a Notice of Enforcement. However, for 2014, this section will be enforced from 6 a.m. to 6 p.m. on July 19, 2014.

(c) Special Local Regulations. (1) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the Coast Guard's Patrol Commander. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after

the vessel has completed its passage through the regulated area. The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Patrol Commander may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(2) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the Captain of the Port. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on

Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

3. Add § 100.928 to read as follows:

§ 100.928 Special Local Regulations, Frogtown Race Regatta, Toledo, OH.

(a) Regulated Area. The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

(b) Enforcement period. This section will be enforced annually on the third or fourth Saturday of September. The exact dates and times would be issued annually via a Notice of Enforcement.

(c) Special Local Regulations. (1) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the Coast Guard's

Patrol Commander. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Patrol Commander may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(2) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the

Captain of the Port to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the Captain of the Port. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

Dated: July 16, 2014.

S. B. LEMASTERS,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Detroit.

[FR Doc. 2014-18287 Filed 07/31/2014 at 8:45 am; Publication Date: 08/01/2014]